United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

76-2128

To be argued by
NICHOLAS G. GARAUFIS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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IMANNUN ABDUT TAWWAB (a/k/a Eric Caesar): NASSIR ABDUL SABUR (a/k/a Irving Dunaway), DAWUD ABDULLAH RAHMAN, TARIQ ABDUR RAHMAN (a/k/a Graham Johnson), ABBAS ABDUL RAQIB (a/k/a Robert Young), KASIM ABDUL JABBAR (a/k/a Herschel Lee Armour), SALAH ABDUR RAHMAN (Levon Jackson), ABDUL BASIR AL JABBAR (a/k/a Lester R. Tepway),

Plaintiffs-Appellants,

-against-

PAUL W. METZ, Individually and as Superintendent of Great Meadow Correctional Facility, and BENJAMIN WARD, Individually and as Commissioner of the New York State Department of Correctional Services, MARSHALL MASON, Individually and as Correctional Sergeant, Great Meadow Correctional Facility,

Defendants-Appellees.

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Pls

BRIEF FOR DEFENDANTS-APPELLEES

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TABLE OF CONTENTS

TABLE OF CASES

CODES, RULES and REGULATIONS

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BRIEF FOR DEFENDANTS-APPELLEES

Preliminary Statement

This is an appeal from an order* of the United States District Court for the Northern District of New York,

* The Memorandum - Decision and Order appears at A33-A42 of the Appendix.

Foley, J., dismissing all five causes of action in the complaint herein for failure to state claims upon which relief can be granted. Plaintiffs-Appellants (hereinafter referred to as "plaintiffs") appeal from the dismissal of the first and fifth causes of action contained in their complaint.*

Questions Presented

1. Whether the District Court properly dismissed plaintiffs' claim regarding the constitutionality of a rule governing the time and length of visits of outside ministers with the entire Sunni Muslim Community at Great Meadow Correctional Facility?

2. Whether the District Court properly dismissed plaintiffs' claim regarding the constitutionality of a rule in the special housing unit of Great Meadow Correctional Facility permitting only one inmate to receive a legal visit at a time?

* The complaint, excluding exhibits, appears at A1-A20 of the Appendix.

Statement of Facts

Plaintiffs claim to be members of the Sunni Muslim religious faith, who were, at the time the alleged claims arose, all inmates at the Great Meadow Correctional Facility, a maximum security prison (Complaint, para. 2)* under the jurisdiction of the New York State Department of Correctional Services. Defendants-Appellees (hereinafter referred to as "defendants") Benjamin Ward, Paul W. Metz, and Marshall Mason, are Commissioner of the Department of Correctional Services, Superintendent of Great Meadow Correctional Facility, and a corrections sergeant at Great Meadow Correctional Facility** respectively.

The following information is (unless otherwise stated) based on the factual allegations contained in the complaint herein. Only for the purposes of the motion to dismiss made and granted below and this appeal, these factual allegations are assumed to be correct.

* The numbers in parentheses refer to paragraphs of the complaint where the allegations are found.

** Great Meadow Correctional Facility is hereinafter referred to as "Great Meadow".

The Sunni Muslim community at Great Meadow consists of approximately 45 members (para. 9) including "ministers" who are "able to lead the community on a daily basis and lead the community in daily and holy day worship and observance" (para. 19).

Plaintiffs make allegations in their complaint regarding a policy of the defendants which they assert has the "effect of limiting severely or in most cases totally eliminating the opportunity of plaintiffs and other Sunni Muslims to access to religiously required religious instruction" (para. 32).

The complaint alleges that the Sunni Muslim religion is recognized and duly acknowledged by the Department of Correctional Services (para. 6), that the followers of the Sunni Muslim religion at Great Meadow meet together* as a community for prayer service on Friday of each week between the hours of 1 and 3 p.m., and that a room or "Mosque" is provided for those meetings by the prison

* except those members in Special Housing or keeplock

administration. Plaintiffs make no allegation of interference with their ability to hold such services on Fridays or that outside ministers are not permitted to attend or conduct such prayer services.

In addition to the Friday afternoon worship, prior to November 22, 1975 limited groups of the Sunni Muslim Community were permitted to meet for "educational classes" each Monday evening from 5 to 7 p.m. (para. 9), and in addition, the entire community was permitted to meet with Muslim ministers from outside the prison for "spiritual teaching, advice and ministrations" at other times when such ministers visited the prison, usually on weekends (para. 10, 24).

During September, October and November, 1975, outside ministers did not visit Great Meadow (para. 25) and, during that period a new prison policy limiting visits between outside ministers and the entire Sunni Muslim community to the time of the regularly scheduled prayer

service and educational classes was instituted (para. 27). At other times, outside ministers would be permitted to meet with three leaders of the Sunni Muslim community at Great Meadow (para. 27). The inmates were informed of the new rule on or about November 22, 1975 when outside ministers resumed their visits to Great Meadow (para. 28, 29); on November 22 and 23, 1975 the outside ministers were permitted to meet with plaintiffs Immanun Abdut Tawwab, Nassir Abdul Sabur and Dawud Abdullah Rahman (para. 29, 30). No allegation is made in the first cause of action that any other plaintiff in this case sought to meet with the outside ministers on those dates for educational purposes.

The complaint states that subsequent to November 22, 1975, defendants modified their policy for educational classes to include two such educational sessions, one on Friday evening and another on Saturday evening, each attended by 15 inmates chosen by the Great Meadow administration from a list of all Sunni Muslims at the institution (para. 31).

These facts asserted by plaintiffs squarely refute their conclusory allegation that the effect of defendants' policy is "limiting severely or in most cases totally eliminating the opportunity of plaintiffs. . . to access to religiously required spiritual instruction" (para. 32) or that the "majority of Muslim inmates were denied their right to practice their religion" (para. 33).

The affidavit of Assistant Attorney General Timothy J. O'Brien*, submitted on behalf of defendants with their motion to dismiss included a copy of an agreement** dated April 1, 1975, by and between the Department of Correctional Services and Ikwanul Muslimin Inc., The agreement, as amended, provides for "outside ministers" at Great Meadow as well as other correctional facilities under the jurisdiction of the Department of Correctional Services (See O'Brien affidavit, para. 5). Pursuant to the agreement, Ikhwanul Muslimin Inc. agreed to establish at Great Meadow and other correctional facilities "(1) where necessary Juma services every Friday, consisting of approximately 2 hours" and also to

* The affidavit of Timothy J. O'Brien appears at A21-28 of the Appendix.

** A copy of this agreement (hereinafter referred to as the "agreement") appears at A29-A32 of the Appendix.

"(2) assist in developing weekly classes dealing with the basic fundamental of the Islam religion, i.e., performance of prayer, pillars of faith and its explanation, and preparation for the annual religious fast."

The complaint does not allege that defendants in any way prohibited or limited plaintiffs from studying literature or other written material regarding their religion, or that the defendants in any manner prohibited or deterred outside ministers from meeting with the entire Sunni Muslim Community at Friday afternoon services or with groups of inmates attending the educational meetings or from consulting with three Sunni Muslim leaders within the prison for the purpose of developing the educational program described in the agreement.

With respect to the fifth claim for relief, the complaint alleges that on December 30, 1975, two attorneys from the Albany Law School Legal Assistance Project visited Great Meadow in connection with this case and that one attorney met with his client in the visiting room of cell

block F for the entire time available for such meetings. A second attorney was unable to meet with her clients on that date due to a special rule then in effect regarding attorney visits with inmates housed in the special segregation cell block, block-F (para. 81, 82). This rule permitted only one inmate at a time to be interviewed by his attorney. The complaint does not indicate whether the attorneys ever subsequently requested an interview or whether they subsequently interviewed the inmates whose meeting was not held on that date.

POINT I

THE DISTRICT COURT PROPERLY DENIED PLAINTIFFS' FIRST CLAIM FOR RELIEF FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED.

Plaintiffs allege that their First Amendment rights have been violated by defendants because outside Sunni Muslim ministers are not permitted to meet with the entire Sunni Muslim community at Great Meadow other than at regularly scheduled group meetings.

The rule at issue permits outside ministers to (1) attend and lead Friday afternoon worship services open to all Sunni Muslims (except those in keeplock or special housing); (2) to attend, lead or participate in educational classes which the prison authorizes for Sunni Muslim inmates; (3) to meet with three inmate leaders of the Sunni Muslims during regular visiting hours. The two-hour educational classes are held on Friday and Saturday evenings and are each attended by fifteen inmates.

Plaintiffs insist that all Sunni Muslim inmates are entitled to meet as a group with outside ministers for up to two hours on the day of any such visit. They request the federal courts enforce this demand.*

Two First Amendment issues are raised by plaintiffs: the right to freely exercise religion, and, in the context of visits by ministers, the right of free association. The right of an inmate to practice religion

*Only the three plaintiffs who met with the outside ministers on November 22 and 23, 1975 are named in the first cause of action. The First Amendment rights of these three plaintiffs have plainly not been violated and they lack standing to bring this claim. Since the first cause of action does not specifically allege that any other plaintiff was denied the opportunity to meet with the outside ministers on these dates for religious purposes and since this is not a class action, the first cause of action fails to state a claim upon which relief could be granted and was properly dismissed.

is "subject to strict supervision and extensive limitations in a prison." Sostre v. McGinnis, 334 F. 2d 906, 908 (2d Cir. 1964), cert. den. 379 U.S. 892 (1964). Freedom of association is also restricted in prisons. Pell v. Procunier, 417 U.S. 817 (1974).

The restrictions imposed by prison authorities on the constitutional rights of inmates must be founded on legitimate and reasonable institutional objectives. The limitations of times and places for meetings between outside ministers and large groups of inmates are grounded upon such objectives, to wit: the maintenance of security and the orderly operation of the facility including the ability of the administration to deploy limited personnel.

The Sunni Muslim ministers' visits at Great Meadow constitute communications with outside persons just as prison visits by other persons would. In Pell v. Procunier, supra at 826, the Supreme Court described the standard applicable to limitations on free association in prison

visitation cases:

> "When, however, the question involves the entry of people into the prisons for face-to-face communication with inmates, it is obvious that institutional considerations, such as security and related administrative problems, as well as the accepted and legitimate policy objectives of the corrections system itself, require that some limitation be placed on such visitations. So long as reasonable and effective means of communication remain open and no discrimination in terms of content is involved, we believe that, in drawing such lines, 'prison officials must be accorded latitude.' Cruz v. Beto, 405 U.S. at 421."

Plaintiffs admit that outside ministers were permitted to meet with three inmate leaders of the Sunni Muslim community on November 22, and 23, 1975 and that the prison rule challenged here would permit other such in-prison meetings. No interference with the content of the meetings held is alleged. Such meetings keep open reasonable and effective

means of communication as would the visits of the outside ministers to the Friday worship service and the two education classes held each week.

Demands that a meeting of all Sunni Muslim inmates be convened whenever an outside minister visits the prison would place a tremendous burden on this penal institution to anticipate such a possibility at any time; it is this type of "face to face" communication the Supreme Court addressed in Pell v. Procunier, supra.

An inmate retains only those First Amendment rights which are not inconsistent with his status as a prisoner or with the penological objectives of the corrections system. Pell v. Procunier, supra. "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system". Price v. Johnston, 334 U.S. 266, 285 (1948). Generally, in matters of security and prison administration, the courts will defer to the expertise of corrections officials and will not interfere with prison operations

except in extraordinary circumstances.* See, Meacham v. Fano, ____ U.S. ____,49 L Ed. 2d 451 (1976). The Court in Procunier v. Martinez, 416 U.S. 396, 404-405 (1974) eloquently stated the federal judiciary's role in supervising prisons when it noted:

> "Traditionally, federal courts have adopted a broad hands-off attitude toward problems of prison administration. In part this policy is the product of various limitations on the scope of federal review of conditions in state penal institutions [footnote omitted]. More fundamentally, this attitude springs from complementary perceptions about the nature of the problems and the efficacy of judicial intervention. Prison administrators are responsible for maintaining internal order and discipline, for securing their institutions against unauthorized access or escape, and for rehabilitating to the extent that human nature and inadequate resources allow, the inmates placed in their custody. The Herculean obstacles to effective discharge of these duties are too apparent to warrant explication. Suffice it to say that the problems of prisons

*The dismissal of the complaint was pursuant to Rule 12(b), Fed. R. Civ. P. The District Court may properly dismiss "whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter" Rule 12 (h), Fed. R. Civ. P. The District Court did not, for purposes of the motion, deny the truth of plaintiffs' factual allegations but did properly review the Affidavit of Assistant Attorney General Timothy F. O'Brien (A29-A32) when considering the motion. Plaintiffs do not question the existence of or substance of the agreement between the Department of Correctional Services and Ikhwanul Muslimun Inc. (A29-A31.)

> in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decrees. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. For all of those reasons, courts are ill-equipped to deal with the increasingly urgent problems of prison administration and reform."

Defendants' actions have not denied plaintiffs the free exercise of religion within the reasonable limitations recognized by the federal courts. The standard for assessing the validity of a prison regulation in this context was enunciated by this Court in LaReau v. MacDougall, 473 F. 2d 974, 979 (2d Cir. 1972), cert. den. 414 U.S. 878 (1973) wherein the Court held that restrictions upon the free exercise of religion can be imposed only

> "if the state regulation has an important objective and the restraint of religious liberty is reasonably adapted to achieving that objective."

In La Reau a segregated inmate's right to attend Catholic church services, a fundamental practice of the Catholic religion, was denied for a substantial reason. The prison administration had "made a reasonable judgment" according to the Court. 473 F. 2d at 979 (emphasis added).

See also Sostre v. McGinnis, supra, wherein this Court stated, 334 F. 2d at 908:

> "The principal problem of prison administration is the maintenance of discipline. . . no romantic or sentimental view of constitutional rights or of religion should induce a court to interfere with the necessary disciplinary regime established by the prison officials."

In the case at bar, the prison administration, pursuant to its duty to provide discipline, security and orderly operation of the facility, set reasonable guidelines for the timing and duration of meetings, and the District Court properly found those restrictions consistent with the constitutional safeguards.* The added component of education does not alter the prison's right to set limitations on First Amendment rights.

Since the plaintiffs make no claim regarding the access of prisoners to religious literature and other

*Plaintiffs also assert a violation of Establishment Clause of the First Amendment (Complaint, para. 35). Plaintiffs make no allegations regarding the existence of prison regulations concerning visits of the Christian Chaplain or outside Christian clergy with large groups of the general Christian population of the prison or the need for a full-time Sunni Muslim Chaplain. Moreover, their erroneous assertion assumes that the regulation of visits with outside Sunni Muslim ministers denies inmates a fundamental religious right.

materials* for educational purposes, it should be concluded that, if such materials are available, they may be used by the plaintiffs and other prisoners to supplement the Friday afternoon services and educational classes on Friday and Saturday evenings or for independent study. Furthermore, the "ministers" within the prison are available for the purpose of counselling members of the Sunni Muslim community regarding the tenets of their religion at other times, and their leaders may consult with outside ministers during regular visiting hours regarding the spiritual and educational programs.

This Court has specifically refrained from mandating the specific means for protecting the rights of inmates under the First Amendment. In Kahane v. Carlson, 527 F. 2d 492, 496 (2d Cir. 1975) the right of an inmate to observe his religious dietary laws was upheld, but the Court declared with respect to implementation,

> "Such details are best left to the prison's management... Prison authorities have reasonable discretion in selecting the means by which prisoners rights are effectuated."

*Plaintiffs admit the existence of religious literature and commentaries which could also serve as educational tools in the teaching of the Islamic religion.

The decision of the court below dismissing the first cause of action was proper and should be affirmed.

POINT II

THE DISTRICT COURT PROPERLY DENIED PLAINTIFFS' FIFTH CLAIM FOR RELIEF FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED.

On December 30, 1975, two attorneys from the Albany Law School Legal Assistance Project visited Great Meadow to meet with inmates located in F-block* regarding the preparation of this case. Pursuant to a rule then in effect in F-block, only one inmate was permitted in the visitors' room to meet with his attorney at one time. Since, on the date in question, one attorney-inmate interview required all available visiting time, two other inmates** did not have the opportunity to consult with a second attorney on that day. Plaintiffs now claim that this minor inconvenience to counsel on a single occasion rises to the level of a deprivation of plaintiffs' right to counsel and access to the courts.***

*F-block houses prisoners who must be segregated for disciplinary reasons or who require protection from other prisoners. See, 7 NYCRR § 300.3.

**Plaintiffs Abbas Abdul Raqib and Dawud Abdullah Rahman.

***It is not shown in the complaint how the plaintiffs' access to the courts was abridged by failure to meet with counsel on one occasion.

Plaintiffs' visiting counsel were well acquainted with the operation of Great Meadow and could have avoided the incident by contacting the prison administration in advance of their visit to F-block to make arrangements to conduct several interviews at the same time.*

The State may impose reasonable restrictions and restraints on inmates. Johnson v. Avery, 393 U.S. 483 (1969). This Court has ruled that the practice of scheduling attorney interviews in advance does not impose a burden of any significance on the right of juveniles to representation by counsel. Negron v. Wallace, 436 F. 2d 1139, cert. den. 402 U.S. 998 (1971). "While the opportunity to consult counsel must be preserved, it is clear that an inmate of a penal institution is not allowed untrammelled intercourse with the outside world, and that the rights of his attorney to that extent are similarly limited." Laughlin v. Cummings, 105 F. 2d 71, 73 (D.C. Cir. 1939).

*Defendants' counsel has learned that pursuant to the Department of Correctional Services' present policy, the successor organization to the Albany Law School Legal Assistance Project submits in advance of visits to the prison the names of inmates its attorneys wish to see, including prisoners in F-block, and Great Meadow as a rule complies with such requests.

Noticeably absent from the complaint is any allegation as to how these two plaintiffs suffered harm from the denial of the attorney visit on December 30, 1975. See Morgan v. Montanye, 516 F. 2d 1367 (1975), rehearing en banc den. 521 F. 2d 693 (1975), cert. den. 424 U.S. 973 (1976). The facts set forth nothing more than an example of an attorney inconvenienced by the prison's F-block restriction. This problem might have been prevented by a telephone call to prison officials before the visit.* This is yet another example of a simple problem which could easily have been resolved administratively (see Negron v. Wallace, supra, and footnote, ante at p. 19) but which has instead been transformed into a basis for unnecessary litigation.

*Plaintiffs have no standing to hypothesize instances where regulations will prejudice F-block inmates who may not be able to see an attorney before a disciplinary hearing (appellant's brief, pp. 16-17). They assert no such time pressure in the instant case and we must assume there was none. Furthermore, this is not a class action.

CONCLUSION

THE DECISION OF THE DISTRICT
COURT SHOULD BE AFFIRMED.

Dated: New York, New York
January 28, 1977

Respectfully submitted,

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